

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL PROVOST,

Plaintiff,

v.

ANDREW SAUL, Commissioner of Social
Security,

Defendant.

No. 2:21-cv-00512 AC

ORDER TO SHOW CAUSE

This is the third, and will be the final, order to show cause issued in this case regarding service. Plaintiff filed a complaint March 20, 2021. ECF No. 1. On March 23, 2021, plaintiff was informed that after service of the complaint, this action would be stayed pursuant to General Order Number 615, and there would be no scheduling order or deadlines in effect pending further order of the court. ECF No. 3. The order also specified that within fourteen days, plaintiff must submit to the United States Marshal a completed summons and copies of the complaint and file a statement with the court that said documents have been submitted to the United States Marshal. Id. Consent/Decline forms were also issued, with a due date of June 24, 2021. ECF No. 5.

Plaintiff's counsel admittedly did not timely submit service documents to the U.S. Marshal. ECF No. 7. On April 8, 2021, the court ordered plaintiff to submit the documents no later than April 21, 2021. ECF No. 6. The court reminded plaintiff that consent forms were due

1 on June 24, 2021. Id. Plaintiff then filed for an extension of time to submit service documents,
2 stating that the documents had, by the time the motion was filed, been provided to the U.S.
3 Marshal. ECF No. 7. Based on this representation the court granted the motion for an extension
4 of time and acknowledged that plaintiff had given the Marshals the service documents. ECF No.
5 8.

6 On July 1, 2021, the court issued a second order to show cause. The court noted that the
7 Commissioner has not appeared in this action. Neither has plaintiff submitted the required
8 consent/decline form. No proof of service had been filed. The court expressed concern that
9 plaintiff did not actually provide the Marshals service documents necessary for service, and/or
10 and that plaintiff had abandoned this case. The undersigned ordered as follows:

11 1. Plaintiff is Ordered to Show Cause, in writing no later than
12 July 9, 2021, why this action should not be dismissed for failure to
prosecute;

13 2. Plaintiff's filing of a proof of service upon defendant AND
14 submission of his consent/decline form will be deemed good cause
shown;

15 3. Any and all expenses associated with private service of
16 process fees shall be borne by plaintiff's counsel and not plaintiff;
and

17 ECF No. 7 at 2.

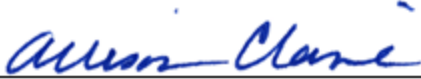
18 On July 7, 2021, plaintiff's counsel submitted a response, including a Marshals service
19 form dated April 8, 2021. ECF No. 10-1. Counsel stated that he submitted the summons and
20 complaint to the Marshal for service, and followed up via telephone, but had not heard back.
21 ECF No. 10 at 1. No consent/decline form was filed. Plaintiff's response does not address the
22 court's concerns and did not comply with the OSC.

23 Local Rule 110 provides that failure to comply with court orders or the Local Rules "may
24 be grounds for imposition of any and all sanctions authorized by statute or Rule or within the
25 inherent power of the Court." This is plaintiff's third and final opportunity to successfully
26 achieve service of process and submit his consent/decline form. If plaintiff does not comply with
27 the terms of this order, the undersigned will recommend dismissal of this case for failure to
28 prosecute without further notice.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff is Ordered to Show Cause in writing, no later than July 28, 2021, why this action should not be dismissed for failure to prosecute;
2. Plaintiff shall file **both** (1) a proof of service by private process server upon defendant **and** (2) his consent/decline form, both by July 28, 2021;
3. Any and all expenses associated with private service of process shall be borne by plaintiff's counsel and not plaintiff; and
4. If plaintiff fails to comply with this order, the undersigned will recommend that this case be dismissed without further notice.

DATED: July 20, 2021


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE